UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PRIDDIS MUSIC, INC.,

Plaintiff/Counterclaim-Defendant,

-against-

TRANS WORLD ENTERTAINMENT CORPORATION,

Defendant/Counterclaim-Plaintiff.

Civil No. 05-CV-0491
(DNH/DRH)

ANSWER & COUNTERCLAIM

ANSWER

In answer to the complaint of the plaintiff in the above-captioned matter, Priddis Music, Inc. ("Priddis"), the defendant, Trans World Entertainment Corporation ("TWEC"), by and through its attorneys, based upon personal knowledge as to its own actions and intent and upon information and belief as to the actions and intent of others, avers as follows:

I. PARTIES

1. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 1 as they relate to any other person or entity.

2. Admits the averments of paragraph 2.

3. Admits the averments of paragraph 3.

4. Admits the averments of paragraph 4.

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II. JURISDICTION AND VENUE

5. States that the averments of paragraph 5 purport to state a legal conclusion and do not require a response.

6. States that the averments of paragraph 6 purport to state a legal conclusion and do not require a response.

III. NATURE OF THE ACTION

7. States that the averments of paragraph 7 do not require a response, except states that the Court's August 26, 2005 Order dismissed Plaintiff's claims for fraud, breach of the implied covenant of good faith and fair dealing, and conversion.

IV. GENERAL ALLEGATIONS

8. Denies the averments of paragraph 8, except admits that TWEC did not do business with Priddis prior to 1999.

9. Denies the averments of paragraph 9, except admits that prior to TWEC's relationship with Priddis, TWEC carried karaoke products manufactured by Sound Choice.

10. Denies the averments of paragraph 10.

11. Denies the averments of paragraph 11, except refers to the referenced document for its contents.

12. Denies the averments of paragraph 12, except refers to the referenced document for its contents.

13. Denies the averments of paragraph 13, except refers to the referenced document for its contents.

14. Denies the averments of paragraph 14.

15. Denies the averments of paragraph 15, except states that TWEC is without information sufficient to form a belief as to the truth of the averments regarding the financial condition of Priddis or its position.

16. Denies the averments of paragraph 16, except refers to the contents of the Buy Out Agreement and the Display Agreement.

17. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 17.

18. Denies the averments of paragraph 18, except refers to the referenced document for its contents.

19. Denies the averments of paragraph 19, except refers to the referenced document for its contents.

20. Denies the averments of paragraph 20, except refers to the referenced document for its contents.

21. Denies the averments of paragraph 21, except states that TWEC is without information sufficient to form a belief to as to the truth of the averment of the second sentence, and further refers to the referenced document for its contents.

22. Denies the averments of paragraph 22, except refers to the referenced document for its contents.

23. Denies the averments of paragraph 23, except refers to the referenced document for its contents.

24. Denies the averments of paragraph 24, except states that TWEC is without sufficient information or knowledge to form a belief as to the truth of the averment of any "substantial investment."

25. Denies the averments of paragraph 25, except states that TWEC is without sufficient information or knowledge to form a belief as to the truth of the averments as they relate to Priddis.

26. Denies the averments of paragraph 26, except refers to the referenced document for its contents.

27. Denies the averments of paragraph 27, except refers to the referenced document for its contents and states that TWEC is without information sufficient to form a belief as to the truth of the averments as they relate to Priddis.

28. Denies the averments of paragraph 28, except refers to the referenced documents for their contents.

29. Denies the averments of paragraph 29, except states that TWEC is without information sufficient to form a belief as to the truth of the averments as they relate to Priddis.

30. States that the averments of paragraph 30 do not require a response, pursuant to the Court's August 26, 2005 Order.

31. States that the averments of paragraph 31 do not require a response, pursuant to the Court's August 26, 2005 Order.

32. States that the averments of paragraph 32 do not require a response, pursuant to the Court's August 26, 2005 Order.

33. Admits the averments of paragraph 33.

34. States that the averments of paragraph 34 do not require a response, pursuant to the Court's August 26, 2005 Order.

35. States that the averments of paragraph 35 do not require a response, pursuant to the Court's August 26, 2005 Order.

36. Denies the averments of paragraph 36.

37. Denies the averments of paragraph 37.

A. TWEC's Alleged Fraudulent Return Schemes

38. States that the averments of paragraph 38 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

39. States that the averments of paragraph 39 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except states that TWEC is without information sufficient to form a belief as to the truth of the averments in the second sentence.

40. States that the averments of paragraph 40 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that it is without information sufficient to form a belief as to the truth of the averments.

41. States that the averments of paragraph 41 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments

42. States that the averments of paragraph 42 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

43. States that the averments of paragraph 43 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

44. States that the averments of paragraph 44 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments and refers to the referenced document for its contents.

45. States that the averments of paragraph 45 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

46. States that the averments of paragraph 46 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

47. States that the averments of paragraph 47 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except admits that TWEC has maintained a "Basic Program."

48. States that the averments of paragraph 48 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

49. States that the averments of paragraph 49 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

50. States that the averments of paragraph 50 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

51. States that the averments of paragraph 51 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

52. States that the averments of paragraph 52 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

53. States that the averments of paragraph 53 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that it is without information sufficient to form a belief as to the truth of the averments.

54. States that the averments of paragraph 54 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

55. States that the averments of paragraph 55 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

B. TWEC's Alleged Fraudulent Discount Schemes

56. States that the averments of paragraph 56 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC refers to the referenced document for its contents.

57. States that the averments of paragraph 57 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

58. States that the averments of paragraph 58 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

59. States that the averments of paragraph 59 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

60. States that the averments of paragraph 60 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

61. States that the averments of paragraph 61 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

62. States that the averments of paragraph 62 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except admits that TWEC sent Priddis a document called "Check Overflow Remittance Advice."

63. States that the averments of paragraph 63 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

64. States that the averments of paragraph 64 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

65. States that the averments of paragraph 65 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

66. States that the averments of paragraph 66 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

67. States that the averments of paragraph 67 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that TWEC is without information sufficient to form a belief as to the truth of the averments regarding any other entity or person.

68. States that the averments of paragraph 68 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

69. States that the averments of paragraph 69 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

70. States that the averments of paragraph 70 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

71. States that the averments of paragraph 71 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

C. TWEC's Alleged Fraudulent Proof-of-Delivery Scheme.

72. States that the averments of paragraph 72 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

73. States that the averments of paragraph 73 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except admits that TWEC has used a computerized system in receiving product.

74. States that the averments of paragraph 74 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

75. States that the averments of paragraph 75 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

76. States that the averments of paragraph 76 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

77. States that the averments of paragraph 77 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

78. States that the averments of paragraph 78 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

79. States that the averments of paragraph 79 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

D. TWEC's Alleged Fraudulent Misrepresentations

80. States that the averments of paragraph 80 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except admits that Priddis periodically withheld shipments.

81. States that the averments of paragraph 81 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

82. States that the averments of paragraph 82 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

83. States that the averments of paragraph 83 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that TWEC is without information sufficient to form a belief as to the truth of the averments regarding any other entity or person.

84. States that the averments of paragraph 84 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

85. States that the averments of paragraph 85 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

86. States that the averments of paragraph 86 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that it is without information sufficient to form a belief as to the truth of the averments regarding any other entity or person.

87. States that the averments of paragraph 87 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

88. States that the averments of paragraph 88 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

89. States that the averments of paragraph 89 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that it is without information sufficient to form a belief as to the truth of the averments regarding any other entity or person.

90. States that the averments of paragraph 90 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

E. TWEC's Alleged Improper Imposition of a "Rack Placement" Fee

91. Denies the averments of paragraph 91, except refers to the referenced document for its contents.

92. Denies the averments of paragraph 92, except refers to the referenced document for its contents.

93. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 93, except refers to the referenced document for its contents.

94. Denies the averments of paragraph 94, except refers to the referenced document for its contents.

95. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 95.

96. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 96, except states that the last sentence purports to state a legal conclusion, which does not require a response.

97. Denies the averments of paragraph 97, except admits that TWEC raised the rack placement fee and states that the last sentence purports to state a legal conclusion, which does not require a response.

98. Denies the averments of paragraph 98.

F. TWEC's Alleged Improper Refusal to Pay for Express Shipping Costs

99. Admits the averments of paragraph 99.

100. Denies the averments of paragraph 100.

101. Denies the averments of paragraph 101.

102. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 102.

103. Denies the averments of paragraph 103.

104. Denies the averments of paragraph 104.

G. Priddis's Attempts to Mitigate

105. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 105.

106. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 106.

107. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 107.

108. Denies the averments of paragraph 108.

109. Denies the averments of paragraph 109.

110. Denies the averments of paragraph 110.

111. Denies the averments of paragraph 111, except refers to the referenced document for its contents.

112. Denies the averments of paragraph 112, except refers to the referenced document for its contents.

113. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 113.

114. Denies the averments of paragraph 114.

115. Denies the averments of paragraph 115.

116. Denies the averments of paragraph 116, except states that Priddis has refused to honor purchase orders from TWEC for new shipments of goods, from in or about February 2004 to present.

117. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 117.

118. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 118, except states that the second half of the sentence purports to state legal conclusions, which do not require a response.

119. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 119, except denies that TWEC owes Priddis monies.

120. Denies the averments of paragraph 120.

FIRST CAUSE OF ACTION

121. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 120 as if fully set forth herein.

122. States that the averments of paragraph 122 do not require a response, pursuant to the Court's August 26, 2005 Order.

123. States that the averments of paragraph 123 do not require a response, pursuant to the Court's August 26, 2005 Order.

124. States that the averments of paragraph 124 do not require a response, pursuant to the Court's August 26, 2005 Order.

125. States that the averments of paragraph 125 do not require a response, pursuant to the Court's August 26, 2005 Order.

126. States that the averments of paragraph 126 do not require a response, pursuant to the Court's August 26, 2005 Order.

127. States that the averments of paragraph 127 do not require a response, pursuant to the Court's August 26, 2005 Order.

128. States that the averments of paragraph 128 do not require a response, pursuant to the Court's August 26, 2005 Order.

129. States that the averments of paragraph 129 do not require a response, pursuant to the Court's August 26, 2005 Order.

130. States that the averments of paragraph 130 do not require a response, pursuant to the Court's August 26, 2005 Order.

SECOND CAUSE OF ACTION

131. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 130 as if fully set forth herein.

132. Denies the averments of paragraph 132, except admits that TWEC and Priddis entered into the Buy Out Agreement, Display Agreement, and Vendor Agreement, and refers to the referenced documents for their contents.

133. Denies the averments of paragraph 133, except states that the Buy Out Agreement, Display Agreement, and Vendor Agreement are valid and enforceable contracts, and refers to the referenced documents for their contents.

134. Denies the averments of paragraph 134.

135. Denies the averments of paragraph 135.

136. Denies the averments of paragraph 136.

137. Denies the averments of paragraph 137.

138. Denies the averments of paragraph 138.

THIRD CAUSE OF ACTION

139. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 138 as if fully set forth herein.

140. States that the averments of paragraph 140 do not require a response, pursuant to the Court's August 26, 2005 Order.

141. States that the averments of paragraph 141 do not require a response, pursuant to the Court's August 26, 2005 Order.

142. States that the averments of paragraph 142 do not require a response, pursuant to the Court's August 26, 2005 Order.

143. States that the averments of paragraph 143 do not require a response, pursuant to the Court's August 26, 2005 Order.

144. States that the averments of paragraph 144 do not require a response, pursuant to the Court's August 26, 2005 Order.

FOURTH CAUSE OF ACTION

145. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 144 as if fully set forth herein.

146. Denies the averments of paragraph 146.

147. Denies the averments of paragraph 147.

148. Denies the averments of paragraph 148.

149. Denies the averments of paragraph 149.

150. Denies the averments of paragraph 150.

FIFTH CAUSE OF ACTION

151. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 150 as if fully set forth herein.

152. Admits the averments of paragraph 152.

153. Denies the averments of paragraph 153.

154. Denies the averments of paragraph 154.

155. Denies the averments of paragraph 155, except states that the last half of the sentence purports to state a legal conclusion, which does not require a response.

SIXTH CAUSE OF ACTION

156. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 155 as if fully set forth herein.

157. States that the averments of paragraph 157 do not require a response, pursuant to the Court's August 26, 2005 Order.

158. States that the averments of paragraph 158 do not require a response, pursuant to the Court's August 26, 2005 Order.

159. States that the averments of paragraph 159 do not require a response, pursuant to the Court's August 26, 2005 Order.

160. States that the averments of paragraph 160 do not require a response, pursuant to the Court's August 26, 2005 Order.

PRAYER FOR RELIEF

States that the enumerated paragraphs 1–5 following Priddis's prayer for relief, contain a request for relief for which no response is required. To the extent a response is required, TWEC denies that Priddis is entitled to the requested relief.

GENERAL DENIAL

TWEC denies each averment contained in the Complaint that is not specifically admitted.

AFFIRMATIVE DEFENSES

First Defense

The Complaint fails to state a cause of action upon which relief can be granted.

Second Defense

Priddis's claims are barred because TWEC has not engaged in any unlawful or unfair business practice, and because TWEC's conduct was performed in the exercise of an absolute right, proper and/or justified.

Third Defense

Priddis's claims are barred by the doctrines of waiver, estoppel, and unclean hands.

Fourth Defense

Priddis has failed, either in whole or part, to mitigate its alleged damages.

WHEREFORE, the defendant, TWEC, prays that this Court enter judgment in favor of TWEC and against the plaintiff, Priddis, dismissing the Complaint with prejudice and granting such other and further relief as the Court deems just and proper, including costs, disbursements, and attorneys' fees.

COUNTERCLAIM

For its counterclaim herein, the counterclaim-plaintiff, Trans World Entertainment Corporation ("TWEC"), by and through its attorneys, upon personal knowledge as to its own actions and upon information and belief as to the actions of the counterclaim-defendant, Priddis Music, Inc. ("Priddis"), avers as follows:

NATURE OF COUNTERCLAIM

This counterclaim arises from Priddis's wrongful refusals (i) to accept goods for return from TWEC and (ii) to honor purchase orders from TWEC for new shipments of goods, such refusals being in violation of valid agreements between the parties, which at all relevant times were in effect and provided TWEC the right to return product to Priddis, to submit purchase orders to Priddis for new shipments of product, and to expect those purchase orders to be filled on a timely basis.

PARTIES

1. TWEC is a New York corporation with its principal place of business in Albany, New York.

2. Priddis is a Nevada corporation with its principal place of business in Lindon, Utah.

JURISDICTION

3. This Court has jurisdiction over TWEC's counterclaim pursuant to 28 U.S.C. § 1332(a)(1). The parties have complete diversity of citizenship, and the amount in controversy exceeds $75,000, exclusive of interests and costs.

BACKGROUND

4. TWEC is a specialty music and video retailer that currently operates over 800 stores in 26 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. TWEC also operates a retail web site at www.fye.com.

5. TWEC operates its national mall-based portfolio under the brand name FYE, For Your Entertainment; the portfolio also includes select Saturday Matinee movie stores. TWEC's freestanding stores include Wherehouse Music, Coconuts Music & Movies, Strawberries, Spec's, CD World, Streetside Records, and Planet Music.

6. TWEC offers a wide selection of entertainment products, including CDs, DVDs, prerecorded audio- and video-cassettes, and related accessories.

7. Priddis manufactures and markets karaoke music products.

8. In 1999, TWEC discontinued its business relationship with Sound Choice, the company that had been supplying karaoke products to TWEC.

9. On or about May 25, 1999, Priddis offered to "buy out" the existing Sound Choice product that TWEC had on hand, and replace it with Priddis's karaoke product and display racks. TWEC accepted the offer. This agreement, referred to as the Buy Out Agreement, also set forth various pricing and payment terms.

10. On or about June 7, 1999, TWEC and Priddis executed a "Vendor Approval Request Form." This agreement, referred to as the Vendor Agreement, set forth certain other terms under which the parties agreed to operate. The Vendor Agreement provides, among other things, that TWEC's orders were "100% Returnable, no exceptions."

11. Effective October 1, 1999, TWEC and Priddis also executed a "Point of Sale Display Agreement." This agreement, referred to as the Display Agreement, set forth the terms and conditions related to the display racks that held the karaoke product.

12. In connection with the proper exercise of its rights, and in the normal course of business, TWEC returned product to Priddis on a number of occasions

beginning in or about May 1999 and periodically thereafter until some time in or about February 2004. During that time, Priddis accepted all shipments of returned product from TWEC.

13. On or about March 4, 2004, TWEC returned two skids of product containing sixty-three cartons each (the "returned product") to Priddis.

14. On or about March 6, 2004, Priddis refused to accept the returned product, which TWEC had shipped to Priddis in good faith and at TWEC's own expense and only after Priddis, via e-mail on or about February 23, 2004, had issued a return authorization ("RA") for the product.

15. From in or about February 2004 to the present, Priddis has wrongfully and unreasonably refused to accept any return of product from TWEC.

16. From in or about February 2004 to the present, Priddis has wrongfully and unreasonably refused to honor purchase orders from TWEC for new shipments of goods.

17. As a direct and proximate result of Priddis's wrongful and unreasonable refusal to accept product returned to Priddis by TWEC under the Agreements and to honor purchase orders from TWEC for new shipments of goods, TWEC has suffered substantial immitigable damages.

COUNTERCLAIM

18. TWEC repeats and realleges the averments in paragraphs 1 through 18, as if fully set forth fully herein.

19. TWEC and Priddis entered into the Buy Out Agreement, Vendor Agreement, and Display Agreement (collectively, the "Agreements"), all of which are valid contracts.

20. TWEC has performed all its duties and obligations under the Agreements.

21. Priddis has breached its express and/or implied duties and obligations under the Agreements by, among other things, refusing to accept the return of product from TWEC and refusing to honor purchase orders from TWEC for new shipments of goods.

22. Priddis has also breached the implied covenant of good faith and fair dealing under the Agreements by affirmatively seeking, through numerous acts of bad faith, to deprive TWEC of the benefits to which it is entitled under the Agreements.

23. As a direct and proximate result of Priddis's breaches of the Agreements and of covenants and/or duties implied under law, TWEC has suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the counterclaim-plaintiff, TWEC, prays that this Court enter judgment on the counterclaim in favor of TWEC and against the counterclaim-defendant, Priddis:

1. awarding TWEC compensatory damages;

2. awarding TWEC pre- and post-judgment interest on the damages caused to Priddis as a result of the wrongful acts alleged herein; and

3. granting TWEC such other relief as this Court deems just and proper.

JURY DEMAND

The counterclaim-plaintiff, TWEC, demands a trial by jury on all issues so triable.

Dated: September 8, 2005

BOIES, SCHILLER & FLEXNER LLP

By: ______________________________

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